

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAMAR MASSAS,	§
	§ No. 552, 2011
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware, in and
	§ for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0706005722
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 7, 2011

Decided: December 6, 2011

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

ORDER

This 6th day of December 2011, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Lamar Massas, filed an appeal from the Superior Court's May 12, 2011 order denying his motion for sentence modification pursuant to Superior Court Criminal Rule 35. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's

judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.* We agree and affirm.

(2) The record before us reflects that, in September 2007, Massas pleaded guilty to a single count of Burglary in the Second Degree. As part of the plea agreement, the State dismissed additional theft and conspiracy charges. Massas was sentenced to 3 years of Level V incarceration, to be suspended for 6 months at Level IV, followed by 18 months of probation. Following a hearing in November 2009, Massas was found to have committed a violation of probation (“VOP”) by incurring a new criminal charge—Possession of a Deadly Weapon By a Person Prohibited. Massas, who was represented by counsel, pleaded guilty to the new charge on November 5, 2009. As part of the plea agreement, the State agreed not to oppose Massas’ VOPs being discharged as unimproved.

(3) Because Massas also had been charged with violating other probationary sentences, a second VOP hearing was scheduled for April 2011. At that hearing, Massas was found to have violated three additional probationary sentences. The Superior Court sentenced Massas on his four VOPs to a total of 6 years at Level V, to be suspended after 2 years for 1

* Supr. Ct. R. 25(a).

year of Level III probation. Massas did not file a direct appeal from his VOP sentences.

(4) On May 2, 2011, Massas moved for modification of his sentences. He sought to have his VOPs discharged as unimproved based upon the State's agreement not to oppose a discharge. On May 12, 2011, the Superior Court denied Massas' motion on the ground that it was not bound by the State's sentencing recommendation. Massas then filed a second motion for sentence modification, which the Superior Court denied as time-barred and repetitive.

(5) In his appeal from the Superior Court's denial of his second motion for sentence modification, Massas claims that, because he wrongly believed that his VOPs would be discharged when he signed the November 5, 2009 plea agreement, his plea was involuntary.

(6) The record belies Massas' claim. The November 5, 2009 plea agreement provides only that the State will not oppose Massas' VOPs being discharged as unimproved; not that the VOPs would, in fact, be discharged. Along with his plea agreement, Massas, who was represented by counsel, signed a Truth-in-Sentencing Guilty Plea Form, in which he acknowledged that his guilty plea was voluntary and that he had not been promised

anything not reflected in the written plea agreement. In the absence of any factual basis for Massas' claim, we conclude that it is without merit.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice